

the taxes are due and payable. Any balance of the amount withheld and not needed to satisfy the taxes will be refunded to the grantor.

(3) Where payment of the taxes is not possible at the time of closing and funds are withheld for this purpose, the Closing Officer will immediately notify the local tax official that title to the particular tract has been conveyed to the United States and that funds have been withheld for the payment of taxes, specifying the taxes for which an amount has been withheld and stating that such funds are in the custody of the Division or District Engineer. In giving such notice, he will use ENG Form 894, Notice to Tax Official.

(4) When the taxes become due and payable, the Division or District Engineer will pay such taxes from the funds withheld from the purchase price. Any excess between the amount of taxes actually paid and the amount withheld will be refunded to the grantor by the Division or District Engineer. Refund checks will be transmitted to the grantor only after it has been definitely determined that all taxes which were liens on the tract are shown as satisfied on the books of the tax collector. This is necessary to avoid the possibility of a refund being made before satisfaction of all tax liens. The tax receipt should be forwarded to HQDA (DAEN-REP-S) WASH DC 20314 for filing with the original title papers.

(5) Where the evidence of title consists of certificates of title or title insurance, and funds are withheld for payment of taxes, the amount so withheld may be turned over to the title company, provided:

(i) The title company is financially responsible and will agree to issue a final certificate of title or title policy in which no tax liens or unpaid taxes will be noted or, if noted, will be followed by the statement:

For the payment of which provision has been made by deposit of a sufficient sum with this company.

(ii) The title company will enter into an escrow agreement with the grantor to hold such sum for the satisfaction of the taxes when they become due, and to return to the grantor any excess remaining after their payment.

(6) Agreements have been reached with the Department of Justice that, in the acquisition of easements, the following will apply:

(i) No provision need be made for the payment of taxes which are a lien but are not due and payable, provided that the purchase price of the easement, including severance damage, is not in excess of 50 percent of the reasonable value of the entire contiguous property of the vendor. In the event the value of the easement has been determined by a "before and after" appraisal, the amount of the "after" appraisal will be utilized in making the necessary determination. In the event no such appraisal has been made, it will not be necessary to prepare a complete appraisal of the value of the contiguous property. In lieu thereof, a memorandum estimate by a qualified appraiser (staff or contract) will be obtained and placed in the tract file. In either case, the appropriate information will be inserted on ENG Form 3536, Statement Concerning Outstanding Encumbrances.

(ii) It will not be necessary to withhold funds for payment of current taxes which are due and payable, if the purchase price of the easement is insufficient to pay such taxes. In such case, Item 4 of ENG Form 3536 and the third block of that form will be completed.

(iii) ENG Form 3536 will be signed by the Closing Officer and the original will appear as a separate document in the Final Title Assembly.

(l) *Payment and Recordation of Deed.*

(1) No disbursement of the purchase price shall be made until:

(i) A duly executed deed has been accepted;

(ii) All outstanding charges, liens, or encumbrances on the land have been satisfied and discharged, or a sufficient sum has been withheld from the purchase price to satisfy and discharge such charges, liens and encumbrances; and

(iii) The title is sufficient for the purposes for which it is being acquired, and all objections thereto have been eliminated or administratively waived in writing.

(2) When the requirements of paragraph (l)(i) of this section have been satisfied, the balance of the purchase

price shall be delivered to the landowners.

(3) The deed and all instruments which release liens or encumbrances on the property shall be promptly recorded.

(m) *Closing of Easements Acquisitions—*

(1) *Easement Costing in Excess of \$1,000.* Closing requirements and procedures with respect to easements costing in excess of \$1,000 are the same as in fee acquisitions, except as to mortgages, deeds of trust, judgments, vendors' liens, and similar title infirmities (§ 644.69(a)), and as to taxes which are liens but which are not due and payable (paragraph (k)(6) of this section).

(2) *Easements Costing Not in Excess of \$1,000.* Closing requirements and procedures with respect to easements costing not in excess of \$1,000 are the same as a fee acquisition except that title infirmities may be waived as provided in § 644.69(b).

(n) *Payment and Closing Under Power of Attorney.* Where the landowner is unable or unwilling to be present personally or to pay from his own funds the amount necessary to satisfy all encumbrances and expenses, the following steps may be taken:

(1) Obtain a power of attorney from the landowner. Standard Form 232, Power of Attorney by Individual for the Collection of a Specified Check Drawn on the United States Treasury, will be used. If the landowner is a corporation, Standard Form 236, Power of Attorney by a Corporation for the Collection of a Specified Check Drawn on the Treasurer of the United States, and Standard Form 237, Resolution by Corporation Conferring Authority Upon an Officer to Execute a Power of Attorney for the Collection of Checks Drawn on the Treasurer of the United States, will be used. The power of attorney will be drawn in favor of the Closing Officer making the payment and closing. Immediately after the post office address of the Closing Officer, the following will be inserted, "Agent for the Disbursing Officer." This insertion must be initialed by the person(s) executing the power of attorney. (Above forms are available through the local GSA Regional Office.)

(2) Obtain from the landowner ENG Form 1569, Order to Disburse Under

Power of Attorney. It will be noted that this form specifically recites types of indebtedness or expense, the names of the persons to be paid under the power of attorney, and the estimated, but not necessarily the exact, amounts thereof. It is important that all items (including cost of revenue stamps, recordation fees for curative material, and bank service charges) be itemized on the form.

(3) The Closing Officer then will take the necessary action for and on behalf of the landowner to discharge the indebtedness and pay expenses under the ENG Form 1569.

(4) If it is possible to have all interested parties, other than the landowner, present at one time and to make all payments simultaneously, a round table closing will be conducted. The Closing Officer, under the power of attorney and order to disburse, will endorse and cash the Treasurer's check and will make the individual disbursements in actual cash.

(5) If it is possible to determine definitely all items of payment simultaneously, but it is not possible to have all interested parties present at one time, the Closing Officer will, under the power of attorney and order to disburse, endorse and cash the Treasurer's check, obtain separate cashier's checks for all items of payment (including the bank services charge for the issuance of such checks), and deliver the checks.

(6) Where it is not possible to determine definitely all items of payment simultaneously, the Closing Officer, under power of attorney and order to disburse, will endorse and cash the Treasurer's check and will obtain separate cashier's checks for all items of payment for which disbursements may be properly made and for any balance representing the total of any items, the amounts of which cannot be definitely determined; in other words, for the residue of the amount of the United States Treasurer's check. In every instance, the cashier's checks will be drawn to provide for endorsement by the Closing Officer or landowner as later determined to be appropriate.

(7) Curative material which requires recordation will be recorded for and on behalf of the landowner and will then be placed with the title papers.